K.S.I. 23/5

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1948.

File No. O.I.P.C./48

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Indian Penal Code.

Opinions under the Indian Penal Code.

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File No. O.I.P.C 48

Std. Sectt. Slip 24 B a.

12-A

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Legal Department File No. O.I.P.C./48.

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1815
K.S.R.
1815.

JPE. 18/5/56.
5 copies.

Office of the R.L.A.

Gur consignments booked in the name of D.M. Surat.

Indian Penal Code, Section 415.

Whether this constitutes cheating.

It appears that one Mr. D. had sent consignments of U.P. gur to Surat and other railway stations on 6-4-1946, 7-6-1947 and 10-6-1947. The D.M.Surat was stated to be both the consignor and the consignee. Mr. D. ~~xx~~tendered the goods at the railway station in the name of D.M. Surat with a view to secure priority for wagons and he succeeded in his attempt. However, these railway receipts were countersigned by the D.M. Surat without taking any objection as there was great demand for U.P. gur. The question raised for the consideration of the R.L.A. is whether Mr. ~~H~~M. D. can be prosecuted for an offence for having consigned the goods in the name of D.M. Surat without his authority.

2. It appears that the only possible offence is one of cheating. Section 415 of the Indian Penal Code defines cheating as follows :-

> (i) Whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person or consent that any person had retained any property or
>
> (ii) intentionally induces the person so deceived to do or to omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to cheat.

The first part deals with delivering property and the second part deals with reputation and they are disjunctive. As to the first part what is necessary to prove is that there must be deception fraudulently or dishonestly caused and the

person.....

person deceived must be induced to deliver any property to any person or to consent that any person shall retain any property. No doubt by mis-representation that the consignments were made by the authority of the D.M. Surat, the railway company could be deemed to have been deceived and Mr. Desai wanted to transport his goods swiftly with a view to make profits. His action was, therfore, also dishonest. But the next question would be whether by practising such deception, the railway authorities were induced to deliver any property to Mr. Desai. Wagons are no doubt property; but wagons which transported the goods did not leave the railway premises. Consequently it appears that there was no delivery of any property by the railway company within the meaning of the first part of section 415 (cf. Legal Remembrancer vs. Manmath Bhushan Chatterjee 51 Cal. p. 250).

3. The next question for the cosideration would be whether the facts disclosed any offence falling under the second part of section 415, I.P.C. A similar question was considered in the aforesaid case (Legal Remembrancer vs. Manmath Bhushan Chatterjee). In that case, there was unauthorized allotment of more wagons to a colliery than they were entitled to, through the fraudulent or dishonest acts of the servants of a railway company. It was held that such deception would not cause or would not be likely to cause any appreciable damage to the railway company's reputation, as the damage would be too remote. In the present case the proper railway charges were paid by Mr. Desai. So that the railway company suffered no damage in

property by making wagons available to Mr. Desai. The damage in mind or reputation of the company by reason of the fact that priority for wagons was given to Mr. Desai on account of the deception practised by him on the company appears to be too remote. Consequently it appears that the case will not come even under the second part of section 415 I.P.C.

4. Further, it may also be noticed that the D.M. Surat himself admits that it is doubtful if there was any malafide intention on Mr. Desai's part for, U.P. gur was awaiting disposal for considerably long time and Government was partly responsible for its early disposal as it was a controlled article. No written authority of the D.M. authorizing Mr. Desai to despatch consignments in the name of the D.M. was demanded by the railway authorities and the railway receipts were countersigned by the D.M. without taking any objection. These facts indicate that the D.M. acquiesced in Mr. Desai using his name to secure priority for wagons. In these circumstances, the facts do not disclose any offence and no prosecution of Mr. Desai would be substainable.

Id/- P. M. L.
11/2
Remembrancer of Legal Affairs.

W.R. to C.S.D., No. 1544, dated the
13th February 1948.

JPS. 17/5/68
4 copies.

Office of the R.L.A.

Publication of removal of the name from the list of Registered Medical Practioners.

Section 499 I.P.C. Exceptions 1st and 7th.

The publication of the Medical Council's decision to remove the name of Dr. Ahuja from the list of registered Medical Practitioners for issuing a false Yellow Fever Inoculation Certificate would be saved by the first and seventh exceptions to section 499, I.P.C. and would not be liable to any action for libal.

Id/- P. M. L.
24/4

Remembrancer of Legal Affairs.

U.R. to Director of Publicity, Bombay,
No 4023 dated the 26th April 1948.

JPB: 17/5/56.
4 copies.

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Office of the A.L.A.

Section 294 of the Indian Penal Code to which the complain is referred provides that -

"Whoever to the annoyance of others-

(a) does any obscene act in any public place or

(b) sings, recitets or utters any obscene songs, ballads or word in or near any public place

shall be punished etc."

The essential elements, therefore, are -

(1) annoyance of others

(2) the commission of the act or the uttering of the words in a public place,

and the third and the most important one

(3) the obscenity of the act or of the words.

"Annoyance" is a wider term than nusance; if we find a thing which reasonably troubles the mind and pleasure of an ordinary sensible person - if there is anything which disturbs his reasonable peace of mind, that would be annoyance. Tod-Heatly v. Benham (1888) 40 Chancery Division p. 80 at p.93. Annoyance in this sense may be presumed in this case. The requirement of the act or the words having been done or uttered in a public place may also be established. But in my opinion, it would be difficult to establish the obscenity of the act or the words. Mr. Hiremath described the objectionable part of the drama in the following words:

> "The Sarathi impressed on the audience by peculiar pantomiming (he touched with his pointing finger on the right side of his nose meaning thereby that she is a debaucherous woman or a prostitute or that she is in illicit connection with the sword bearer). The sword bearer asked further with signs for questioning himself. The Sarathi later akaks the lady as to who she was and what was her name. She replies that her name was Mrs. Krishnabai Panajikar."

I am given to understand that the gesture described above would convey to the audience of thos parts the suggestion that the woman with reference to whom

the....

the gesture was made was a prostitute or was a person of bad character. It might even be capable, as Mr. Hiremath seems to think of the suggestion, that she was in illicit intimacy with the sword bearer (who is said to have represented Sardar Vallabhbhai Patel). The gesture would offend against the law to the same extent as words conveying these suggestions would have. Words conveying the above suggestions could not have been treated as obscene although they would of course be highly defamatory; and it follows that a gesture which was intended to convey nothing beyond such defamatory accusation would not be obscene. The use of the word "obscene" is ordinarily restricted to something offensive to decency or expressing or suggesting lustful ideas or being indecent or lewd. The test of obscenity is that there should be a tendency to deprave or corrupt those whose minds are open to such immoral influences. In order that a gesture should be classed as obscene, it must be capable of exciting libidinous thoughts or of inflaming passions or it should be calculated to incite the person who saw it to indulge in acts of indecency or immorality. Presumably the gesture was not capable of this result; and if that be so, it would be difficult to treat it as obscene, actionable though it might be otherwise. However, as the case is sub-judice, we should await the result.

Id/- P. M. L.
28/5

Remembrancer of Legal Affairs.

U.R. to H.D. No. 267-Confl,
dated the 29th May 1948.

JPE. 17/5/56
4 copies.

Office of the R.L.A.

Indian Penal Code.
Section 182.

Prosecution for false information.

Although thw words "any person" used in clause (b) of section 182 of the Indian Penal Code are wide enough to include a subordinate of the public servant to whom information is given, as a matter of policy, it would be inadvisable to take action against the informant for complainst xmade to official superiors. Moreovex, the prosecution must establish that the accused had positive knowledge or belief that the information was false. The accused is not beund to show that it was in fact true. From the meagre statement of facts given by the District Magistrate it would be difficult to say that the accused had no reasonable grounds for believing the inmformation to be true. On the whole, action under section 182 would not seems advisable.

Id/- P. M. L.
1/6

Remembrancer of Legal Affairs.

U.R to P.& S.D. No. 5183,
dated the 1st June 1948.

JPS. 17/5/56
4 copies.

Office of the R.L.A.

Repairs to drains and obstruction of water.

Indian Penal Code, 1860.

Sec. 430.

As the law stands at present the failure to repair drains would render the owner liable for a civil action if by such failure any damage is cause to the adjoining lands. So too would the steps taken to diminish the supply of water to other lands involve only a similar liability save in cases where the provisions of section 430, I.P.C., are attracted.

Whether such wrongs which are now civilly punishable should be made offences in a matter of policy.

Id/- P. M. L.
26/6

Remembrancer of Legal Affairs.

U.R. to R.D., No. 6020, dated the 23th June 1948.

JTE. 17/5/56
4 copies.

Office of the R.L.A.

The only courses left open in this case are for the tenants to commence (a) criminal prosecutions and (b) civil proceedings. If it can be established that the Pathans' entry into the premises was part of the same transaction in the course of which the locks were broken and forcible possession taken by the landlord, there is a fair chance of the criminal prosecution succeeding even against the Pathans; for in that case, I do not think that the Pathans can set up the defence of a bonafide claim. Anyway there is no objection to taking action for criminal trespass before commencing civil proceedings. Perhaps, the Pathans themselves may think discretion to be the better part of valour, if firm intimation is given to them that they would be prosecuted.

Looking to the peculiar facts of this case, the Police can take charge of the prosecutions, as they would have to, even otherwise, since criminal trespass and house-trespass are cognizable offences under the Indian Penal Code.

Sd/- P.M.Lad.
24/6/48

Remembrancer of Legal Affairs.

U.R. to H.D., No. 5946,
dated the 25th June 1948.

JPE. 17/5/56
4 copies.

Office of the R.L.A.

Mr. Shankarrao More delivered a speech in the Poona Spring Series on the 29th of May 1948. The subject of speech was "Maharashtrians - Workers or Owners ?" The following is a brief summary of what he is reported to have said: The largest class in Maharashtra has been reduced to the position of workers; and so too the class of small craftsmen and the lower middle class. All the big industries in Maharashtra are in the hands of "Lals" and "Chands" i.e. Gujarathis & Marwaris. They control industries, and now the danger of the aggression by Sindhi merchants is threatened. Unless we take measures to save us from the agression of people from other provinces, Maharashtra will remain on the map only in name. The complaint was made that the people of Maharashtra have not been given their due share in the Government of the Country and of their own province tha t some Maharashtrians have been selected for post because they are "convenient" to Sardar Vallabhbhai and that despite the fact that they had 72 seats in the Bombay Legislature, Maharashtrians were given unimportant portfolios Maharashtrians should unite against the danger of aggression by people of other Provinces and the Brahmins must take the lead in that movement of establishing unity by banishing communal feelings. The concluding passage which is regarded as objectionable is in the following terms :-

> "To-day the Vaishyas are ruling. We wish to establish the rule of the workers. For that purpose we must have only (one) class viz. that of workers. Unless power is handed over to that class, the public will rise and capture that power. There was recently one such uprising, and the Brahmin houses had a foretaste thereof. With the upsurge of the second wave, capitalists from other Provinces would be submerged, and with the third wave the workers would capture power. Therefore, our only salvation lies in securing the sympathies of the lower classes. Only by that method can the question be solved."

In the first place, the report is not a verbatim

17/5/56

report...

report. Read as a whole, the speech is an exhortaxtion to the people of Maharashtra to unite and establish the rule of the working class. The Complaints about the subordinate position of Maharashtra and the aggression of capitalists from other Provinces would not seem actionable under section 153-A of the Indian Penal Code which deals with promoting enmity between classes. Apart from the difficulty of treating capitalists as a well defined class, even if it werex viewed as referring to all Gujarathis, Marwaris and Sindhis, the speech would be entitled to the protection of the explanation to that section; as it seems difficult to extract therefrom a malicious intention. The concluding portion is more likely to be treated as a speculative prophecy and not as an incitement to violence, especially as the speaker exhorted the audience to cultivate the sympathies of the lower classes and recommended that as the only means of salvation. On the whole, the speech would not seem actionable.

Id/- P. M. L.
17/7

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.)(1), No. 6740
dated the 19th July 1948.

JPZ. 17/6/56.
3 copies.

Indian Penal Code, 1860.

Complaint under sec.182 to be filed by H.M.R.D.

Office of the R.L.A.

In the case of an offence under section 182, I.P.C. the complaint either of the public servant to whom the false information was given or of some ~~xxx~~ other authority to whom he is subordinate would be necessary. In the present case the false information was given to H.M.R.D. H.M.R.D. being a public servant can himself file a complaint under section 182, I.P.C. He being himself the head of the department cannot direct any other officer to file the complaint. The view taken by H.D. at 'A' of its note at page 14 ante is not correct.

Sd. P.N.Lad/20/7
Remembrancer of Legal Affairs.

U.R. to H.D. , No. 6824, dated the 21st July 1948.

JPE. 17/8/56.
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No.21 of 1948.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 23rd August 1948.

U.R. to the Advocate General of Bombay, No. 6856, dated the 22nd July 1948.

OPINION.

Out of the four poems poem No. 56 requires to be considered as to whether the same is objectionable.

The test of obscenity is whether the tendency of the matter-- charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands the publication of that sort may fall. I had the stanzas, proceeding as also following the disputed portion, translated to me in order to understand the proper meaning in its context. No doubt, the language used is vulgar but at the same time in order to launch a prosecution against the poet and the publisher under Sections 292 and 293 of the Indian Penal Code, a clear case should be made out. Judging by the aforesaid test, in my opinion, it would not be advisable to launch such a prosecution. The poet ought to have used better language. Still, however, it would be very risky to launch a prosecution.

Sd/- M. P. Amin

Offg. Advocate General.

JPE. 17/8/48.
4 copies.

Office of the R.L.A.

As requested by H.M.(Home), the Advocate General, Bombay, was consulted in the matter. A copy of his opinion is forwarded to the home Department.

Id/- P. M. L.
25/8
Remembrancer of Legal Affairs.

U.R. to H.D.(Political), No. 475-Confl, dated the 25th August 1948.

jPK. 17/8/56
4 copies.

Office of the R.L.A.

Indian Penal Code, 1860.

Whether an allegation of bribery against a Govt. servant amounts to defamation under sec. 499.

An allegation of bribery against a Government servant amounts to defamation and a prosecution for defamation under section 499, I.P.C., for making such allegation would be sustainable unless it falls under the second, eighth or ninth exception to that section (see Aung P.C. v. The King, 39 Cr.L.J.663 and R.L.A's opinion No. 8268, dated 12-8-1947).

Id/- P. M. L.
2/9

Remembrancer of Legal Affairs.

U.R. to H.D., No. 8484, dated the 4th September 1948.

JPE. 17/8/86.
4 copies.

Submitted with reference to H2D. note at p.19-21 ante.
The facts of the case in brief are as follows:-

On 27-7-48, one Mr. A.A.Maroo sent an application along with a list amounts alleged to have been paid by him on 15-4-48 for a number of motor vehicles as tax, and in his application he made a serious allegation against Mr.S.S.Vardey, the cashier for criminally mis-appropriating an amount of Rs. 704-8-0. According to him, he had paid annual tax for B.M.T. 7399 and B.M.T. 7319 on 16-4-1948 but on 24-4-48 he discovered that tax entry showned quarterly tax on both the registration certificates. Mr. Vardey's explanation was therefore called and as per his explanation it was found that the allegation in the complaint was false. Mr. Vardey has stated in his explanation that the total of the list submitted by Mr. Maroo is Rs. 3540 and not Rs. 3657 as stated by Maroo. According to him, Mr. Maroo has arrived at the difference of Rs 704-8-0 by deducting the quarterly tax for B.M.T: 7319 and B.M.T? 7399 which was actually paid by him from the annual tax which is alleged to have been paid by him on 15-4-48 and then added to it the amount actually paid by him (i.e. Rs 2952/8) thus making the total Rs 3657/-. Mr. Vardey further ~~xx~~contends that Mr. Maroo had heard him cracking a joke on 15-4-48 that there was a deficit of Rs 710/- and the complainant seems to have based his false allegation on that. According to him the list submitted by her on 15/4/45 was checked and receipt issued for the sum of Rs2952/8/- which was actually received, though in his subsequent statement Mr. Maroo denies having received a receipt. Mr. Vardey admits that the complainant had come to the office on or about the 17th July 1948 saying that there was some mistake in his getting quarterly discs for two vehicles instead of annual ones and had even referred to the joke of Rs 710/- shortage. First, Mr. Vardey thought he was joking but when he found him to be serious he explained to him the procedure followed in the office and told him that

xx

no....

no such error could ever occur as cashiers cannot pass a receipt unless they have appropriate amounts on the counter. When he still seemed to be dissatisfied Mr. Vardey asked him to make a petition and informed the Dy. Accountant and some of his friends of the matter as it appeared to be serious.

Since Mr. Maroo's allegations are apparently false, H.D. has decided to prosecute him under section 182 I.P.C. R.L.A. has been requested to advise whether prosecution if launched would be successful.

Prima facie ther is good case for prosecuting Mr. Maroo for the offence under section 182 I. .C.

P.
Id/- E.B.
11/10

A.L.R. "A" may be the reply.

Id/- R.T.K.
15/10

R.L.A. Id/- P. M. L.
15/10.

Reply A.

U.O.R. to H.D., No. 9725 dt. 8/10/1948.

JPM. 18/5/56.
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I have gone through the evidence, and I feel that the view taken by the Magistrate on facts is substantially correct. The main question of fact is whether the accused tore the picture of Gandhiji published in the special one-sheet issue of "Balvant" dated 30th January 1948 by removing it from the wall to which it was nailed below the mirror, or whether the accused picked up the sheet which was lying on the ground for wrapping the ground-nuts he had taken, and whether it got torn in the scuffle when the complainant tried to snatch it from him. The fact that the accused did take ground-nuts is admitted by one of the witnesses. It is, therefore, quite likely that he must have asked for a piece of paper to wrap them in. Had the accused made it a point to destroy Gandhiji's picture wherever he found it as the complainant maintains, he need not have waited till the 8th of February for destroying this particular picture.- The complainant got the issue containing the picture immediately after the assassination on the 31st, and the accused admittedly frequented his shop thereafter. If it was the settled intention of the accused to destroy the picture, he could have done so even before. The complainant and the accused are both Brahmins of the same Chitpawan Caste. There is no evidence to suggest that the accused belongs to any political party or had political inclinations which were opposed to the policy then advocated by Gandhiji; and there would thus be no incentive for him to provoke a shop-keeper who was helping him in selling his berries. Besides, the happenings after 31st January were well-known, and a person in the position of the accused would not have

courted the risk of openly provoking a breach of the peace by an act of this kind. The witnesses who are peripatetic barbers deny that they are connected with the complainant; but the complainant himself admits that they are his tenants. No complaint was immediately made to the local police patil; but the complaint was made to the Police Sub Inspector, Ratnagiri, after the complainant went to the town the next day. On the whole I am inclined to agree with the Magistrate that the fact of the picture being torn in the wanton manner suggested by the complainant is not borne out by the evidence.

2. It is, therefore, unnecessary to consider the legal aspect of the act. I would, however, add that even if the act be as described by the complainant, it would be difficult to bring it within the purview of section 295, since that section requires the intention of insulting the religion of any class of persons. Destroying a picture of Gandhiji would not be insulting any religion as that term is understood. Similarly section 504 requires an insult to a person and thereby giving provocation with the intention or knowledge that such provocation will cause a breach of the peace. It may be that insult need not be confined only to abusive words, and an act also can be insulting. But it is doubtful whether by his act of tearing the picture, the accused can be said to have offered an insult to the complainant.

3. Although the tone of the Magistrate's judgment is not quite happy, no useful purpose will be served in pursuing this matter any further.

Id/- P.M.L.
18/11
Remembrancer of Legal Affairs.

U?R. to H.D. (Spl.) No.,623-Confl. dated 18/11/1948.

J?E. 18/5/56. 4 copies.

Office of the R.L.A.

Prosecutions of persons who have taken part in raids and looting of Indian Villages
---
Indian Penal Code, 1860.

It appears that a number of persons have been detained by the District Magistrates of the Districts bordering on the Hyderabad State for having taken part in raids on villages and for looting in those villages. It is proposed by H.D. that such persons who are at present detained should be prosecuted if evidence is available against them. The Home Secretary, however, doubts whether it will be possible to prosecute these persons and the R.L.A. is accordingly requested to advise.

It is clear that persons who have taken part in raids and looting on the Indian territory have been guilty of robbery and dacoity and other offences punishable under the Indian Penal Code. Section 2 of the Indian Penal Code provides that every person shall be liable to punishment under this code and not otherwise for every act or omission contrary to the provisions therof of which he shall be guilty within British India. The term every person includes natives of an Indian State and even foreigners and in the circumstances there appears no legal objection to prosecuting these persons provided there is sufficient evidence.

Id/- P. M. L.
30/10

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.), No. 593-Confl,
dated the 4th November 1948.

JPE. 18/5/56
4 copies.

Office of the R.L.A.

Advertisement of medicines.

Indian Penal Code, 1860. Sec.292.

Advocate General's Opinion No.31 of 1948 and R.L.A's opinion No. 10614, dated 6-11-1947.

The question for R.L.A's consideration is whether the advertisement of famous medicines of Madhusudan Company appearing at page 7 in the issue Of VENI, dated the 2nd October 1948 is obscene.

2. The test of obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands th publication of that sort may fall (see Advocate General's opinion No31 of 1943). It is difficult to hold that the advertisement in question has thi tendency though the wording of the advertisement is no doubt not in good taste. The R.L.A. has already pointed out the necessity of legislation to control such advertisements which disfigure the pages of our newspapers and if Government desires to put a shop to such advertisement, action as suggested in R.L.A's ppinion No. 10614, dated 6-11-1947 may be taken without delay.

Id/- P.M.L.
21/12

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.), No.123009 dated the 24th December 1948.

JPE. 18/5/66
4 copies.

Office of the H.L.A.

Prosecution for making false affidavits.

Indian Penal Code, 1860. Sections 181 and 182.

The Government of India observe that the prosecution in these cases would probably be for making false statements as to the declarant's illness. The statements contained in the affidavits cannot by themselves be made the subject-matter of a prosecution for the offence under section 181 I.P.C. (Compare Kamakhya Prasad Dalal v. Emperor, I.L.R. 1939, 2 Cal. p.459). However, the false statements as to illness contained in the letters addressed to the Secretary to the Government of India, Finance Department, together with similar statements in support contained in the affidavits accompanying those letters attract the provisions of section 182 of the I.P.C. The evidence on record, provided the prosecution are sure of producing it before the Court, appears sufficient for a prima facie case under that section.

Id/- P. N. L.
13/12
Remembrancer of Legal Affairs.

U.R. to F.D., No. 679-Confl, dated the 14th December 1948.

JPS. 18/5/56
4 copies.